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8 IN THE UNITED STATES DISTRICT COURT
9
10 FOR THE DISTRICT OF ARIZONA
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12 **JULIE A. SU**, Acting Secretary of Labor,
13 United States Department of Labor,

14 Plaintiff,

15 v.

16
17 **BEAN DRYWALL, INC.**, a corporation;
18 **MICHAEL N. BEAN**, an individual,

19
20 Defendants.
21

Case No.

**[PROPOSED] CONSENT
JUDGMENT AND ORDER**

22 Plaintiff Julie A. Su, Acting Secretary of Labor, United States Department
23 of Labor (“Acting Secretary”), and Defendants Bean Drywall, Inc. and Michael N.
24 Bean (“Defendants”), have agreed to resolve the matters in controversy in this
25 civil action and consent to the entry of this Consent Judgment in accordance
26 herewith:

27 1. The Acting Secretary filed a Complaint in the above-captioned
28 proceeding naming Defendants and alleging they violated provisions of sections 7,

1 11(c), 15(a)(2) and 15(a)(5) of the Fair Labor Standards Act of 1938, as amended
 2 (“FLSA”), 29 U.S.C. §§ 207, 211(c), 215(a)(2) and 15(a)(5).

3 2. Defendants have retained counsel and acknowledge receipt of a copy
 4 of the Acting Secretary’s Complaint in this action.

5 3. Defendants waive issuance and service of process of the Summons
 6 and Complaint and waive their response to the Acting Secretary’s Complaint.

7 4. The Acting Secretary investigated Defendants pursuant to the FLSA
 8 during the period of March 6, 2021, through and including March 5, 2024, (“Back
 9 Wage Accrual Period”). The parties have agreed to settle and resolve all FLSA
 10 violations attributable to Defendants during the Back Wage Accrual Period
 11 through this Consent Judgment.

12 5. The Parties agree to waive findings of fact and conclusions of law
 13 and agree to the entry of this Consent Judgment without further contest.

14 6. Defendants admit that the Court has jurisdiction over the parties and
 15 subject matter of this civil action. They further agree that venue lies in the District
 16 of Arizona.

17 7. Defendants engaged in drywall and other construction services on
 18 custom homes, small tract developments, and commercial projects.

19 **PERMANENT INJUNCTION**

20 **IT IS HEREBY ORDERED, ADJUDGED, AND DECREED** that,
 21 pursuant to Section 17 of the FLSA, 29 U.S.C. § 217, Defendants, their officers,
 22 agents, servants, employees, successor companies, parties in interest, and all
 23 persons and entities acting at their direction or in concert or participation with
 24 them, are permanently enjoined and restrained from violating the FLSA, including
 25 through any of the following manners:

26 1. Defendants shall not, contrary to the FLSA § 7, 29 U.S.C. § 207,
 27 employ any non-exempt employee who in any workweek is engaged in
 28 commerce, within the meaning of the FLSA § 3(s), 29 U.S.C. § 203(s), or is

1 employed in an enterprise engaged in commerce or in the production of goods for
2 commerce, within the meaning of FLSA § 3(s), 29 U.S.C. § 203(s), for any
3 workweek longer than 40 hours unless such employee receives compensation for
4 their employment in excess of 40 hours in such workweek at a rate not less than
5 one and one-half times the regular rate at which they are employed.

6 2. Defendants shall not fail to make, keep, make available to authorized
7 agents of the Acting Secretary for inspection, transcription, and/or copying, upon
8 their demand for such access, and preserve records of employees and of the
9 wages, hours, and other conditions and practices of employment maintained, as
10 prescribed by regulations issued, and from time to time amended, pursuant to
11 FLSA §§ 11(c) and 15(a)(5), 29 U.S.C. §§ 211(c) and 215(a)(5) and the
12 implementing regulations found in Title 29, Code of Federal Regulations, Part
13 516.

14 3. Defendants, if not already in effect at the time of entry of this
15 Consent Judgment, shall amend and maintain their payroll practices as follows:

16 A. Defendants shall accurately record the information required by
17 29 C.F.R. § 516.2 in the payroll records, including (1) all hours worked by
18 employees each workday and workweek; (2) the rate(s) of pay for each of the
19 hours worked during a workweek; (3) the total weekly straight-time earnings due
20 for the hours worked during the workweek; (4) the total premium pay for overtime
21 hours; and (5) if Defendants choose to calculate pay through any type of
22 production-based system, such as a piece rate system, Defendants shall: a) notify
23 employees of the standard applicable piece rate to be paid in writing, b) keep a
24 written record of any changes to or deviations from the standard applicable piece
25 rate; c) maintain a record of the identities of all employees working on any “crew”
26 to which a given employee is assigned; d) maintain a record of the precise formula
27 used to calculate how each employees’ weekly pay, including overtime pay, is
28 calculated, and make such information open to each employee for inspection; e)

1 calculate overtime at time and one-half the employee's regular rate (the regular
2 rate is calculated by dividing the employee's total weekly earnings before any
3 deductions are made by the total number of hours worked in that workweek); and
4 f) show all deductions on the employee's weekly paystub along with an
5 explanation of the deductions.

6 B. Defendants' timekeeping system shall permit employees (as
7 opposed to supervisors) to track their individual work hours daily. If changes in
8 the time records later are required, Defendants shall designate and authorize one
9 or more individuals to correct time entry errors. Crew leaders and superintendents
10 may not change or edit employee entered hours on a time sheet. Defendants will
11 dedicate an individual to train employees on filling out time sheets and perform
12 periodic checks of them at various worksites. This provision shall remain in effect
13 for 3 (THREE) years from the entry date of this Consent Judgment or until an
14 electronic timekeeping system is implemented for all employees.

15 C. Defendants shall maintain all time, piece rate, and payroll
16 records for a period of not less than 3 (THREE) years.

17 D. Defendants shall record all wages paid to employees,
18 regardless of the manner of payment, on their payroll records, and any expense
19 reimbursements must be recorded in Defendants' accounting system.

20 E. Defendants, within a month of the entry of this Consent
21 Judgment, or within 30 (THIRTY) calendar days of a person's employment into
22 one of the types of positions named herein shall 1) inform all supervisors,
23 managers, and persons performing payroll duties of the requirements of this
24 Consent Judgment and 2) provide a copy of this Consent Judgment to them.

25 F. Defendants shall direct their supervisors, managers, and
26 persons performing payroll duties to encourage workers to report all hours worked
27 and piece rate work performed.

28 4. Defendants understand and affirmatively acknowledge that all

1 individuals who perform construction labor services for or on behalf of
2 Defendants, other than individuals performing services on behalf of bona fide
3 subcontractors with whom Defendants have a written subcontract agreement, will
4 be paid wages under the FLSA that are subject to the issuance of IRS Form W-2,
5 Wage and Tax Statement. Defendants further understand and expressly
6 acknowledge that such individuals are employees and as such are afforded all
7 protections and safeguards guaranteed under the FLSA, including without
8 limitation those found in FLSA §§ 6, 7, 11(c), 15(a)(2), 15(a)(3) and 15(a)(5), 29
9 U.S.C. §§ 206, 207, 211(c), 215(a)(2), 215(a)(3), and 215(a)(5).

10 5. Defendants, their officers, agents, servants, and employees and those
11 persons in active concert or participation with them, shall not in any way directly
12 or indirectly, demand, require or accept any of the back wages or liquidated
13 damages paid to Defendants' current and former employees ("Employees") under
14 this Consent Judgment. Defendants shall not threaten or imply that adverse action
15 will be taken against any Employee because of its receipt of funds due under this
16 Consent Judgment. Violation of this Paragraph may subject the Defendants to
17 equitable and legal damages, including punitive damages and civil contempt.

18 6. Defendants, their officers, agents, servants, and employees and those
19 persons in active concert or participation with them, shall not in any way directly
20 or indirectly, demand, require or accept any of the back wages or liquidated
21 damages from any of the Employees who receive monies under this Consent
22 Judgment. Defendants shall not threaten or imply that adverse action will be
23 taken against any Employee because of its receipt of funds due under this Consent
24 Judgment. Violation of this Paragraph may subject the Defendants to equitable
25 and legal damages, including punitive damages and civil contempt.

26 7. Defendants, their officers, agents, servants, and employees and those
27 persons in active concert or participation with them, shall not in any way retaliate
28 or take any adverse employment action, or threaten or imply that adverse action

will be taken against any Employee who exercises or asserts its rights under the FLSA or provides information to any public agency investigating compliance with the FLSA. Violation of this Paragraph may subject the Defendants to equitable and legal damages, including punitive damages and civil contempt.

8. Defendants shall not continue to withhold the payment of \$875,000.00 (EIGHT HUNDRED SEVENTY-FIVE THOUSAND DOLLARS AND ZERO CENTS) in overtime pay hereby found to be due by the Defendants under the FLSA to Employees, as a result of their employment by Defendants during the period of March 6, 2021, through and including March 5, 2024.

JUDGMENT

FURTHER, JUDGMENT IS HEREBY ENTERED, pursuant to Sections 16(c) and (e) of the FLSA, 29 U.S.C. §§ 216(c) and (e), in favor of the Acting Secretary and against Defendants in the amount of \$1,807,798.32 (ONE MILLION EIGHT HUNDRED SEVEN THOUSAND SEVEN HUNDRED NINETY-EIGHT DOLLARS AND THIRTY-TWO CENTS).

Pursuant to this Judgment, **IT IS HEREBY ORDERED THAT**

9. Defendants shall pay \$875,000.00 (EIGHT HUNDRED SEVENTY-FIVE THOUSAND DOLLARS AND ZERO CENTS) in overtime pay hereby due under the FLSA and this Consent Judgment, to Employees as determined by the Acting Secretary.¹ In addition, liquidated damages in the amount of \$875,000.00 (EIGHT HUNDRED SEVENTY-FIVE THOUSAND DOLLARS AND ZERO CENTS) are hereby due under the FLSA and Defendants shall pay this amount to Employees as determined by the Acting Secretary.

10. Defendants shall pay \$28,000.00 (TWENTY-EIGHT THOUSAND

¹ The Acting Secretary is not including an Exhibit A with this Consent Judgment listing the Employees who are due back wages and liquidated damages herein because not all of the Employees' actual names who are due monies are known as of the date this Consent Judgment is entered because of record keeping issues.

DOLLARS AND ZERO CENTS) in civil money penalties (“CMPs”) that were assessed against Defendants and finally determined, pursuant to FLSA Section 16(e), 29 U.S.C. § 216(e).

11. Finally, Defendants shall pay \$29,798.32 (TWENTY-NINE THOUSAND SEVEN HUNDRED NINETY-EIGHT DOLLARS AND THIRTY-TWO CENTS) in post-judgment interest at the rate of 4.08 (FOUR POINT ZERO EIGHT) percent.

12. Defendants will comply with Paragraphs 9 through and including 11 of this Consent Judgment by making payments as identified below.

Payment #	Type	Payment Date	Payment Amt.
Down Payment	BWs & LDs	12/2/2024	\$410,000.00
CMP Payment	CMPs	12/2/2024	\$28,000.00
#1	BWs, LDs & Int	1/1/2025	\$114,149.86
#2	BWs, LDs & Int	2/2/2025	\$114,149.86
#3	BWs, LDs & Int	3/3/2025	\$114,149.86
#4	BWs, LDs & Int	4/1/2025	\$114,149.86
#5	BWs, LDs & Int	5/1/2025	\$114,149.86
#6	BWs, LDs & Int	6/2/2025	\$114,149.86
#7	BWs, LDs & Int	7/1/2025	\$114,149.86
#8	BWs, LDs & Int	8/1/2025	\$114,149.86
#9	BWs, LDs & Int	9/1/2025	\$114,149.86
#10	BWs, LDs & Int	10/1/2025	\$114,149.86
#11	BWs, LDs & Int	11/3/2025	\$114,149.86
#12	BWs, LDs & Int	12/1/2025	\$114,149.86

13. In addition, Defendants shall provide to the Claims Administrator on request the employer’s portion of payroll taxes as computed by the Claim’s Administrator at the time.

1 14. Defendants shall make the CMP payment by going to www.pay.gov,
2 then entering “WHDCMPWE” in the search field, clicking search, selecting the
3 “WHD Civil Money Penalty Payment Form – Western Region” payment form,
4 clicking the blue “Continue,” and following payment instructions. When making
5 this CMP payment, Defendants shall reference Case Number 1942852.

6 **DISTRIBUTION OF WAGES, LIQUIDATED DAMAGES & INTEREST**

7 **IT IS FURTHER ORDERED** that the parties shall follow the steps
8 outlined below to hire a Claims Administrator and make the back wage and
9 liquidated damage payments ordered above.

10 15. Defendants shall submit the name of a proposed Claims
11 Administrator to the Acting Secretary’s designated representative for approval
12 within 15 (FIFTEEN) business days of entry of this Consent Judgment. If the
13 Acting Secretary’s designated representative does not approve, Defendants shall
14 propose a different Claims Administrator to the Acting Secretary’s designated
15 representative within 10 (TEN) business days of the last disapproval of the Acting
16 Secretary’s designated representative until approved.

17 16. On or before December 1, 2024, or within 10 (TEN) business days of
18 the Acting Secretary’s designative representative approving a Claims
19 Administrator, whichever is sooner, Defendants will hire a Claims Administrator
20 to receive the payments from Defendants and distribute those funds as set forth in
21 this Consent Judgment.

22 17. The Claims Administrator shall oversee the payments to Employees
23 as directed by the Acting Secretary’s designated representative in this person’s
24 sole discretion.

25 18. If the hired Claims Administrator declines to serve or to carry out its
26 duties under this Consent Judgment, Defendants will make the payments to the
27 Acting Secretary directly who will complete the distributions in this case.
28 Defendants shall make the remaining payments for overtime back wages and

1 liquidated damages owed required by this Consent Judgment online by ACH
2 transfer, credit card, debit card, or digital wallet by going to
3 <https://www.pay.gov/public/form/start/77761888>, or by going to www.pay.gov
4 and searching “WHD Back Wage Payment – WE Region.” Payments shall
5 reference Case Number 1942852.

6 19. All of the Claims Administrator’s administration fees and costs shall
7 be paid by Defendants pursuant to their agreement with the Claims Administrator,
8 a copy of this agreement will be provided to the Acting Secretary within 10 (TEN)
9 business days of it being fully executed. Defendants’ fees and costs include
10 making international wire transfers. Said administration fees will not be funded
11 by or deducted from the back wages, liquidated damages, or CMPs that
12 Defendants owe under this Consent Judgment.

13 20. Defendants shall make the payments identified in Paragraph 12
14 herein by the dates specified in Paragraph 12 herein by electronically depositing
15 said amounts into a noninterest-bearing Qualified Settlement Fund (“Settlement
16 Fund”) account established by the Claims Administrator (*see* Paragraph 21.A.
17 herein for further information about the Settlement Fund). Should any payments
18 in Paragraph 12 become due before the Settlement Fund is established,
19 Defendants’ payments will be held in abeyance and will become due no later than
20 10 (TEN) calendar days of Defendants being notified of the establishment of the
21 Settlement Fund by the Claims Administrator.

22 21. The Claims Administrator will work with the Acting Secretary’s
23 designative representative and Defendants to carry out the terms of this Consent
24 Judgment. The Claims Administrator will be responsible for:

25 A. establishing, within 10 (TEN) calendar days of being hired, a
26 Settlement Fund account to hold in trust the back wages, liquidated damages, and
27 interest thereon that Defendants shall pay pursuant to Paragraphs 9 and 11 herein.

28 B. notifying the Parties within 10 (TEN) calendar days of the

1 establishment of the Settlement Fund: the date this fund was established, and the
2 information (routing and account numbers) needed for Defendants to make their
3 electronic payments into the Settlement Fund;

4 C. receiving payments from Defendants in accordance with
5 Paragraphs 12 and 20 herein and holding such payments in the Settlement Fund in
6 trust, until the Acting Secretary's designated representative instructs the Claims
7 Administrator to make distributions;

8 D. confirming Defendants electronically deposited the back wages,
9 liquidated damages, and interest payments into the Settlement Fund in accordance
10 with Paragraph 12, not later than 3 (THREE) business days after the monies were
11 due to be deposited as listed in Paragraph 12 herein;

12 E. notifying the Acting Secretary's designated representative
13 within 3 (THREE) business days of learning that Defendants did not make a
14 payment as required by Paragraph 12 herein;

15 F. responding to information requests from Employees,
16 Defendants, and the Acting Secretary's designated representative;

17 G. Obtaining a notification document from the Acting Secretary's
18 designated representative and Defendant's Counsel, Heidi Nunn-Gilman, to be
19 placed on the Claims Administrator's website to provide general information about
20 the Consent Judgment;

21 H. Providing a link to the notification document contained in the
22 previous paragraph to the Acting Secretary's designated representative and
23 Defendant's Counsel, Heidi Nunn-Gilman, so that it can be included in the template
24 notices mailed to the Employees;

25 I. Obtaining template notices from the Acting Secretary's
26 designated representative and Defendant's Counsel, Heidi Nunn-Gilman, that will
27 be included with the mailings sent to the Employees;

28 J. mailing template notices and their accompanying W-4s to

1 designated Employees within 10 (TEN) business days after receiving instructions
2 from the Acting Secretary's designated representative regarding who shall be sent
3 these mailings;²

4 K. obtaining updated addresses for Employees and re-mailing
5 returned notices and related documents;

6 L. calculating separately the Defendants' share of payroll taxes and
7 the individual Employee's share of payroll taxes and income tax withholding only
8 for the back wage amounts paid to Employees, and to not withhold or deduct taxes
9 from the liquidated damages amounts paid to Employees;

10 M. Should Employee(s) respond to the notice(s), but not return
11 W4(s), the Claims Administrator will take the standard income tax withholding(s)
12 from the Employee(s)' back wages.

13 N. deducting the individual Employee's share of payroll taxes and
14 income tax withholding from the back wage portion of the Employees' back wage
15 payments;

16 O. putting an expiration date on the checks to Employees that is
17 120 (ONE HUNDRED TWENTY) calendar days after the date the checks were
18 issued;

19 P. issuing payments to Employees in accordance with the
20 individual Employee's W-4 and instructions by the Acting Secretary's designated
21 representative such that the Employees' back wage portions are only reduced by
22 their share of payroll taxes and the amount of income taxes withheld;

23 Q. obtaining from Defendants their payment of their share of
24 payroll taxes when requested;

26 ² The Claims Administrator will make not more than 2 (TWO) distributions
27 to designated Employees while payments are being collected from Defendants and
28 1 (ONE) distribution to the remaining Employees after Defendants completed
making their payments.

1 R. paying the payroll taxes for the Defendants and Employees and
2 the income tax withholds for the Employees to the appropriate federal agencies;

3 S. filing tax returns with respect to the Settlement Fund for the
4 payroll taxes and tax withholdings for Defendants and Employees;

5 T. issuing IRS Form W-2s (for the back wages) and 1099s (for the
6 liquidated damages) to each Employee who cashes a payment;

7 U. communicating as necessary with the Acting Secretary's
8 designated representative and Defendants;

9 V. tracking all necessary data (e.g., full name, title, date, time,
10 issue, how issue was resolved, contact telephone number) regarding contact with
11 Employees and Defendants;

12 W. reissuing checks where required in consultation with the Acting
13 Secretary's designated representative;

14 X. distributing the remains of the Settlement Fund to the Acting
15 Secretary pursuant to the directions provided in Paragraph 23 herein and by the
16 Acting Secretary's designated representative; and

17 Y. adjusting the prioritization, process and manner of these
18 distributions based solely on instructions from the Acting Secretary's designated
19 representative who will inform the Claims Administrator the order of paying the
20 Employees.

21 22. The Parties agree to the following processes for administering
22 payments to Employees:

23 A. Within 10 (TEN) business days after entry of this Consent
24 Judgment, the Acting Secretary will provide the Defendants with the name and
25 contact information (telephone number, e-mail address and physical address) of her
26 designated representative for administering her responsibilities under this Consent
27 Judgment;

28 B. Within 5 (FIVE) business days after hiring, the Claims

1 Administrator, Defendants shall inform:

2 1) the Acting Secretary's designated representative of the
3 date the Claims Administrator was hired and the Claim's Administrator's contact
4 information (telephone numbers to include mobile number, e-mail address and
5 physical address).

6 2) the Claims Administrator of the contact information of
7 the Acting Secretary's designated representative (telephone number, e-mail address
8 and physical address).

9 C. Within 10 (TEN) business days after hiring the Claims
10 Administrator, Defendants shall provide a list in Excel format to the Claims
11 Administrator, and the Acting Secretary's designated representative, containing the
12 full name; mailing address; telephone number(s); e-mail address; social security
13 number; birth date; direct deposit information, to the extent such information is
14 known; and messaging platform (e.g., WhatsApp) and username, number, or other
15 personal identifier the worker is known to use for each Employee (the "Employee
16 List"). Thereafter, the Acting Secretary's designated representative shall either 1)
17 inform the Claims Administrator and Defendants that the Employee List is correct;
18 or 2) revise the Employee List to the extent necessary to make it correct and provide
19 the revised list to the Claims Administrator and Defendants;

20 D. Within 20 (TWENTY) business days after the Acting
21 Secretary's designated representative provides a revised list, Defendants shall
22 provide a revised Employee List in Excel format to the Claims Administrator and
23 the Acting Secretary's designated representative containing the same information
24 required in the previous paragraph for the Employees who were added. Thereafter,
25 the Acting Secretary's designated representative shall either 1) inform the Claims
26 Administrator and Defendants that the Employee List is correct; or 2) revise the
27 Employee List to the extent necessary to make it correct and provide the revised list
28 to the Claims Administrator and Defendants. To the extent that the Acting

1 Secretary's Designated Representative provides another revised list, then the
2 process in this paragraph will be repeated until this representative no longer
3 provides a revised list;

4 E. The Acting Secretary's designated representative and
5 Defendant's Counsel, Heidi Nunn-Gilman, will draft a notification to be given to the
6 Claims Administrator to be placed on its website at the link specified in the template
7 notices sent to Employees to provide general information about this Consent
8 Judgment.

9 F. The Acting Secretary's designated representative and
10 Defendant's Counsel, Heidi Nunn-Gilman, will draft template notices to be provided
11 to the Claims Administrator to be sent to each Employee that:

- 12 1) informs the Employee of this Consent Judgment;
- 13 2) informs the Employee of the amount of back wages
14 before taxes, the amount of liquidated damages and the amount of interest to which
15 the Employee is entitled;
- 16 3) requests that the Employee complete and return IRS form
17 W-4 for use in calculating withholdings for the back wage payment;
- 18 4) states that a social security number is not required for the
19 Employee to collect the owed wages, liquidated damaged and interest;
- 20 5) advises the Employee to contact Acting Secretary's
21 designated representative at a designated telephone number with any questions
22 related to the Consent Judgment to include the administration and distribution of
23 monies therefrom;
- 24 6) informs the Employees that their checks must be cashed
25 within 120 (ONE HUNDRED AND TWENTY) calendar days from the date of
26 issuance; and
- 27 7) provides a link to the notification page on the Claims
28 Administrator's website containing general information about this Consent

1 Judgment.

2 G. Defendants will provide to the Claims Administrator their share
3 of payroll taxes within 20 (TWENTY) calendar days after the Claims Administrator
4 requests them to pay the amount of employer payroll taxes due;

5 H. The identities of all persons who are due FLSA § 7 back wages
6 and liquidated damages under this Consent Judgment are presently unknown to
7 the Acting Secretary. The Acting Secretary will endeavor to confirm the identities
8 of such persons. She will also file an Exhibit A to the Consent Judgment
9 identifying the persons due back wages and liquidated damages and the back
10 wages and liquidated damages allocated to each person, within 2 (TWO) years of
11 the date of the Court's entry of this Consent Judgment. The Acting Secretary may
12 file subsequent amendments to Exhibit A as necessary and in her sole discretion to
13 supplement or revise the names or amounts listed. The total amount of FLSA § 7
14 back wages and liquidated damages attributable to Defendants and paid to all
15 Employees deemed to be due such back wages and damages shall not exceed
16 \$1,750,000.00 (ONE MILLION SEVEN HUNDRED FIFTY THOUSAND
17 DOLLARS AND ZERO CENTS) split evenly between back wages and liquidated
18 damages; and

19 I. In the event of any default by Defendants in the timely making
20 of the full amount of any payment due hereunder as specified in Paragraphs 12
21 and 20, the full amount due under this Consent Judgment which then remains
22 unpaid, plus post-judgment interest at the rate of 10 (TEN) percent per year, from
23 the date of this Consent Judgment until paid in full, shall become due and payable
24 upon the Acting Secretary's counsel sending, by ordinary mail, a written demand
25 to the last business address of Defendants then known to the Acting Secretary and
26 an e-mail to Defendants' counsel who approved the entry of this Consent
27 Judgment.

28 **DISTRIBUTION OF UNPAID FUNDS BY THE ACTING SECRETARY**

1 **IT IS FURTHER ORDERED** that the parties follow the steps outlined
2 below to address the remaining unpaid funds due to the Employees:

3 23. Between 30 (THIRTY) to 40 (FORTY) calendar days after the last
4 120 (ONE HUNDRED AND TWENTY) calendar day period for all Employees to
5 cash their checks expires measured from the dates of issuance, the Claims
6 Administrator shall remit the entirety of all unredeemed and remaining funds to
7 the Acting Secretary pursuant to the instructions provided below *and* by the
8 Acting Secretary's designated representative. This will include:

9 A. the full amounts in all checks that were not cashed within 120
10 (ONE HUNDRED AND TWENTY) calendar days of issuance; and

11 B. the full amounts of all back wages, liquidated damages, and
12 interest payable to Employees whose notices were returned as undeliverable and
13 to which the Claims Administrator was not able to establish contact with the
14 Employees.

15 24. Unless instructed otherwise by the Acting Secretary's designated
16 representative, the Claims Administrator will remit these unpaid funds to the
17 Acting Secretary at "WHD Back Wages Payment Form – Western Region" at
18 <https://www.pay.gov/public/form/start/77743734>. This payment shall reference
19 Case Number 1942852.

20 25. The Claims Administrator will notify the Acting Secretary's
21 designated representative on the day it makes payments under Paragraphs 23 and
22 24 herein. Additionally, within 10 (TEN) days after this notification, the Claims
23 Administrator will provide the Acting Secretary's designated representative a
24 Summary Report of its payment of funds under this Consent Judgment wherein it
25 will list for each Employee *who cashed a check* issued by the Claims
26 Administrator: the Employee's full name, gross amount of monies due to the
27 Employee, total net amount of monies paid to Employee; and dates checks were
28 cashed.

1 26. The Acting Secretary shall allocate and distribute the proceeds from
2 the funds it receives as described in Paragraphs 23 and 24 in her sole discretion to
3 the persons determined to be due back wages, liquidated damages, and interest
4 under this Consent Judgment, or to their estates if necessary, in her sole discretion.
5 Any money not so paid within a period of three years from the date that the money
6 is transferred to the Acting Secretary pursuant to Paragraphs 23 and 24 herein
7 because of an inability to locate the proper persons or because of their refusal to
8 accept it, shall be then deposited in the Treasury of the United States, as
9 miscellaneous receipts, pursuant to 29 U.S.C. § 216(c).

10 27. The Acting Secretary shall be responsible for deducting the
11 Employee's share of federal income and payroll taxes from the gross back wage
12 amounts paid to the persons who receive back wages under this Consent Judgment
13 from the Acting Secretary, and for remitting said deductions to the appropriate
14 federal agencies.

15 28. Defendants are responsible for the employer's portion of payroll
16 taxes on the back wages paid by the Acting Secretary pursuant to this Consent
17 Judgment. The Acting Secretary's designated representative will notify
18 Defendants of any back wage payments she makes under this Consent Judgment
19 within 30 (THIRTY) business days of making them,

20 **IT IS FURTHER ORDERED** that the filing, pursuit, and/or resolution of
21 this proceeding with the entry of this Consent Judgment shall not act as or be
22 asserted as a bar to any action or claim under FLSA § 16(b), 29 U.S.C. § 216(b),
23 as to any employee not named on Exhibit A, nor as to any employee named on
24 Exhibit A for any period not specified herein, nor as to any employer other than
25 Defendants. To the extent that this issue is raised before Exhibit A is filed, then
26 the names on the Employee Lists previously provided by Defendants will serve as
27 a substitute for Exhibit A.

28

For Plaintiff:

MARC A. PILOTIN

Regional Solicitor

BORIS ORLOV

Counsel for Wage and Hour

/s/ Norman E. Garcia

10/25/24

NORMAN E. GARCIA,
Senior Trial Attorney

DATE:

1 **For Defendants:**

2
3 The Defendants hereby appear and consent to the entry of this Judgment and waive
4 notice by the Clerk of Court.

5 Bean Drywall, Inc.

6 

7
8 BY: MICHAEL N. BEAN
9 President, Shareholder

10/24/2024

DATE:

10 

11 MICHAEL N. BEAN,
12 Individually

10/24/2024

DATE:

1 **Approved as to Form:**

2 **Counsel for Defendants.**

3
4 By: *H. Nunn-Gilman*

10/25/2024

5 HEIDI NUNN-GILMAN

DATE:

6 PSGM Law,

7 7901 N. 16th St #200,

8 Phoenix, Arizona 85020;

602.851.8797;

9 hgilman@psgmlaw.com